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William Richard Dyer

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EXAMINER

JARRETT, SCOTT L

ART UNIT

PAPER NUMBER

3623

DATE MAILED: 05/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

EA

<b>Office Action Summary</b>	<b>Application No.</b> 09/764,338	<b>Applicant(s)</b> DYER, WILLIAM RICHARD	
	<b>Examiner</b> Scott L. Jarrett	<b>Art Unit</b> 3623	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 February 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### DETAILED ACTION

1. This Final Office Action is responsive to Applicant's amendment filed February 8, 2005. Applicant's amendment of February 8, 2005 amended the specification, drawings and claims 1-17. Currently claims 1-17 are pending.

### *Response to Amendment*

2. The objection to the specification in the First Office Action is withdrawn in response to the Applicant's replacement drawing sheets and amendments to the specification.

3. The objection to Claim 13 in the First Office Action is withdrawn in response to the Applicant's amendment to Claim 13.

4. The 35 U.S.C. § 112 (2) rejection of Claim 9 in the First Office Action is withdrawn in response to the Applicant's amendments to Claim 9.

5. The 35 U.S.C. § 101 rejection of Claims 1-17 in the First Office Action are **sustained** in response to the Applicant's arguments. Please see the response to arguments section below.

6. The 35 U.S.C. § 103(a) rejections of Claims 1-17 in the First Office Action are **sustained** in response to the Applicant's arguments or amendments. Please see the response to arguments and 35 U.S.C. § 103(a) rejections below.

***Response to Arguments***

7. Applicant's arguments filed February 8, 2005 have been fully considered but they are not persuasive. In the Applicant's remarks filed February 8, 2005 the Applicant argued:

- regarding the 35 U.S.C. § 112(1) rejection of Claims 1-17 "that person's of ordinary skill in the art would be readily aware of many means by which survey participants responses could be compared" (see Page 9);

- regarding the 35 U.S.C. § 101 rejection of Claims 1-17, that the claims 1-17 are within the technological arts because the claims (see Pages 10-14):

- do produce a useful, concrete and tangible results; and
  - do not embody an abstract idea;

- regarding the 35 U.S.C. § 103(a) rejections of Claims 1-17 that the art of record does not teach presenting one or more consumer products to the user and presenting a questionnaire to the user if the user selects at least one of the consumer products presented (as amended claim now reads, see Page 15).

8. As stated above the Applicant's arguments with regards to the 35 U.S.C. § 112(1) (2) rejections of Claims 1-17 have been fully considered and are deemed persuasive. The 35 U.S.C. § 112(1) (2) rejections of Claims 1-17 has been withdrawn.

9. With respect to the Applicant's arguments regarding the 35 U.S.C. § 101 rejection of Claims 1-17 the arguments have been fully considered and are not persuasive. The 35 U.S.C. § 101 rejection of Claims 1-17 is not withdrawn.

As an initial matter, the Examiner would like to note that claims 1-17 were rejected under 35 U.S.C. § 101 as failing to be in the technological arts as required by 35 U.S.C. § 101. Examiner stated in the Office Action of October 8, 2004 that claims 1-17 do produce a useful, concrete, and tangible (Page 5, Paragraph 2). Consequently, all of the Applicant's arguments regarding the recitation of a useful, concrete, and tangible result in Claims 1-17 are moot.

Regarding the requirement under 35 U.S.C. § 101 that a claimed invention be limited to the technological arts in order to be deemed statutory and in response to Applicant's arguments found on Pages 11-14 of the Applicant's Remarks of February 8, 2005, the Examiner submits that the phrase "technological arts" has been created and used by the courts to offer another view of the term "useful arts." See *In re Musgrave*, 167 USPQ (BNA) 280 (CCPA 1970). Hence, the first test of whether an invention is eligible for a patent is to determine if the invention is within the "technological arts."

Further, despite the express language of §101, several judicially created exceptions have been established to exclude certain subject matter as being patentable subject matter covered by §101. These exceptions include "laws of nature," "natural phenomena," and "abstract ideas." See *Diamond v. Diehr*, 450, U.S. 175, 185, 209 USPQ (BNA) 1, 7 (1981). However, courts have found that even if an invention incorporates abstract ideas, such as mathematical algorithms, the invention may

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nevertheless be statutory subject matter if the invention as a whole produces a “useful, concrete and tangible result.” See *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* 149 F.3d 1368, 1973, 47 USPQ2d (BNA) 1596 (Fed. Cir. 1998). This addresses the second test under 35 U.S.C. § 101 of whether or not an invention is eligible for a patent. The Manual of Patent Examining Procedure reiterates this point. More specifically, MPEP § 2106(II)(A) states, “The claimed invention as a whole must accomplish a practical application. That is, it must produce a ‘useful, concrete and tangible result.’ *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601-02.” Furthermore, “Only when the claim is devoid of any limitation to a practical application in the technological arts should it be rejected under 35 U.S.C. 101.” (MPEP § 2106(II)(A))

This “two prong” test was evident when the Court of Customs and Patent Appeals (CCPA) decided an appeal from the Board of Patent Appeals and Interferences (BPAI). See *In re Toma*, 197 USPQ (BNA) 852 (CCPA 1978). In *Toma*, the court held that the recited mathematical algorithm did not render the claim as a whole non-statutory using the Freeman-Walter-Abele test as applied to *Gottschalk v. Benson*, 409 U.S. 63, 175 USPQ (BNA) 673 (1972). Additionally, the court decided separately on the issue of the “technological arts.” The court developed a “technological arts” analysis:

The “technological” or “useful” arts inquiry must focus on whether the claimed subject matter...is statutory, not on whether the product of the claimed subject matter...is statutory, not on whether the prior art which the claimed subject matter purports to replace...is statutory, and not on whether the claimed subject matter is presently perceived to be an improvement over the prior art, e.g., whether it “enhances” the operation of a machine. *In re Toma* at 857.

In *Toma*, the claimed invention was a computer program for translating a source human language (e.g., Russian) into a target human language (e.g., English). The court found that the claimed computer implemented process was within the “technological art” because the claimed invention was an operation being performed by a computer within a computer.

The decision in *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* never addressed this prong of the test. In *State Street Bank & Trust Co.*, the court found that the “mathematical exception” using the Freeman-Walter-Abele test has little, if any, application to determining the presence of statutory subject matter but rather, statutory subject matter should be based on whether the operation produces a “useful, concrete and tangible result.” See *State Street Bank & Trust Co.* at 1374. Furthermore, the court found that there was no “business method exception” since the court decisions that purported to create such exceptions were based on novelty or lack of enablement issues and not on statutory grounds. Therefore, the court held that “[w]hether the patent's claims are too broad to be patentable is not to be judged under §101, but rather under §§102, 103 and 112.” See *State Street Bank & Trust Co.* at 1377. Both of these analyses go towards whether the claimed invention is non-statutory because of the presence of an abstract idea. *State Street* never addressed the first part of the analysis, i.e., the “technological arts” test established in *Toma* because the invention in *State Street* (i.e., a computerized system for determining the year-end income, expense, and capital gain or loss for the portfolio) **was already determined to be within the technological arts** under the *Toma* test. This dichotomy has been recently

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acknowledged by the Board of Patent Appeals and Interferences in affirming a §101 rejection finding the claimed invention to be non-statutory for failing the technological arts test. See *Ex parte Bowman*, 61 USPQ2d (BNA) 1669 (BdPatApp&Int 2001).

It is important to note that in the *Bowman* decision the Board acknowledged the dichotomy of the analysis of the claims under 35 U.S.C. § 101, thereby emphasizing the fact that not only must the claimed invention produce a “useful, concrete and tangible result,” **but that it must also be limited to the technological arts** in order to be deemed statutory under the guidelines of 35 U.S.C. § 101. The Board very explicitly set forth this point:

[1] We agree with the examiner. Appellant has carefully avoided tying the disclosed and claimed invention to any technological art or environment. As noted by the examiner, the disclosed and claimed invention is directed to nothing more than a human making mental computations and manually plotting the results on a paper chart [answer, Page 5]. The Examination Guidelines for Computer-Related Inventions are not dispositive of this case because there is absolutely no indication on this record that the invention is connected to a computer in any manner.

Despite the express language of 35 U.S.C. §101, several judicially created exceptions have been excluded from subject matter covered by Section 101. These exceptions include laws of nature, natural phenomenon, and abstract ideas. See *Diamond v. Diehr*, 450 U.S. 175, 185, 209 USPQ 1, 7(1981). We interpret the examiner's rejection as finding that the claimed invention before us is nothing more than an abstract idea because it is not tied to any technological art or environment. Appellant's argument is that the physical (even manual) creation of a chart and the plotting of a point on this chart places the invention within the technological arts.

The phrase “technological arts” has been created to offer another view of the term “useful arts.” The Constitution of the United States authorizes and empowers the government to issue patents only for inventions which



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promote the progress [of science and] the useful arts. We find that the invention before us, as disclosed and claimed, does not promote the progress of science and the useful arts, and does not fall within the definition of technological arts. The abstract idea which forms the heart of the invention before us does not become a technological art merely by the recitation in the claim of "transforming physical media into a chart" [sic, drawing or creating a chart] and "physically plotting a point on said chart."

In summary, we find that the invention before us is nothing more than an abstract idea which is not tied to any technological art, environment, or machine, and is not a useful art as contemplated by the Constitution of the United States. The physical aspects of claim 1, which are disclosed to be nothing more than a human manually drawing a chart and plotting points on this chart, do not automatically bring the claimed invention within the technological arts. For all these reasons just discussed, we sustain the examiner's rejection of the appealed claims under 35 U.S.C. §101. See *Ex parte Bowman*, 61 USPQ2d (BNA) 1669, 1671 (BdPatApp&Int 2001)

Similarly, in the present application, claims 1-17 are deemed to be non-statutory because they are not limited to the technological arts; a human could perform all recited steps manually. In conclusion, the Examiner submits that Appellant's claims do not meet the technological arts requirement under 35 U.S.C. § 101, as articulated in *Musgrave and Toma*.

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10. Applicant's arguments filed February 8, 2005, see Pages 14-15, with respect to the 35 U.S.C. § 103(a) rejection of Claims 1-17 have been fully considered and are not persuasive. The 35 U.S.C. § 103(a) rejections of Claims 1-17 are **not** withdrawn.

The Applicant argues that the art of record does not teach presenting one or more consumer products to the user and/or presenting a questionnaire to the user if the user selects at least one of the consumer products presented (as the amended claims now read, see Page 15).

A complete and full 35 U.S.C. § 103(a) rejection of Claims 1-17 is described in the section below however the 35 U.S.C. § 103(a) rejections can be summarized as follows.

- Pitkow et al., Using the Web as a Survey tool, teach a method a system for conducting surveys via the utilization of the Internet (Web) as a survey tool (Abstract, Introduction, Pages 1-3). More generally the Pitkow et al. teach that the method for conducting online surveys that enables one to ask any number of questions regarding any number of topics including but not limited to for surveying users with respect to one or more products (Overview, Pages 4-5; Consumer Surveys section Pages 10-11; commercialization, product purchases).

- Dyer et al., U.S. Patent No. 5,090,734, teach a method for sustainability testing wherein sustainability testing is defined as determining a product's "ability to generate loyalty and hence repeat purchases among a segment of the consuming public"

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(Column 2, Lines 3-6; Column 5, Lines 53-68; Column 6, Lines 1-25). More specifically Dyer et al. teaches that the method for sustainability testing comprises:

- presenting (providing) one or more products to the user (member, test panel, evaluation packet, evaluation set, test set, market set; Abstract; Column 1, Lines 19-68; Column 3, Lines 33-42 and 48-60) for evaluation over a plurality of cycles (waves, successive time periods; Column 2, Lines 19-50; Column 5, Lines 53-68);
- asking the user to “respond to the test by sampling the product” (Column 2, Lines 51-63);
- utilizing a “written survey to establish a baseline of preference data” (Column 3, Lines 61-65);
- selecting products to be tested based on the written survey results (Column 15-19);
- enabling users to order products “at no charge” (Column 3, Lines 6-19; Column 4, Lines 51-68; Column 5, Lines 11-35; Column 6, Lines 9-1);
- accepting and storing the user’s responses (orders, purchases; “record their snack food purchases”; Column 2, Lines 67-68; “a convenient method for recording this data” Column 5, Lines 37-52).

Further Dyer et al. teaches that there are a plurality of well-known and well-established means for evaluation products by consumers including but not limited to product surveys (Column 1, Lines 14-54).

- Pinsely et al., U.S. Patent No. 6,070,145, teach a method and system for conducting multi-party online surveys (Abstract) and that such surveying of users

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enhances the ability of vendors, advertisers and the like meet the users needs (e.g. insure the success and sustainability of their products; Abstract; Column 1, Lines 58-68; Column 2, Lines 1-15; Figures 1 and 4).

In essence the disclosed invention merely represents the obvious evolution of the method for sustainability testing as taught by Dyer et al. via the utilization of online (computer-based) surveys and therefore does not rise to the level of a novel or non-obvious invention.

Please see the 35 U.S.C. § 103(a) rejection of Claims 1-17 below for the complete 35 U.S.C. § 103(a) rejections of Claims 1-17.

11. It is noted that the applicant did not argue the Official Notice applied to Claims 2, 9, 10, 15 and 17 in the First Office Action therefore those statements as presented are herein after prior art. This admitted prior art includes at least the treatment of outliers, giving of products for testing/promotion or other purposes, the offering exclusive products to vendors, the utilization of XML for transmitting data and the utilization of a cookie as an identifying code.

***Claim Rejections - 35 USC § 112***

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims 4, 6, 7, 9 and 11 recite the limitation "the item" (first/second item/items) in Claim 1. There is insufficient antecedent basis for this limitation in the claim. Examiner interpreted the phrase item to read one or more consumer products.

Appropriate action is required.

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 1, 3-5, 11, 13-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Using the Web as a Survey Tool: Results from the Second WWW User Survey (Pitkow, James et al., October-November 1994) in view of Dyer et al., U.S. Patent No. 5,090,734.

Regarding Claim 1 Pitkow et al. teaches a method for surveying online users (web users) comprising the steps of:

1. presenting an adaptive questionnaire (survey) to the user over the distributed network wherein questions are adapted (changed, triggered) based on the questions asked and answered/not answered by the user (Internet; Abstract, Introduction, Overview, Pages 1-4);
2. accepting and storing (using electronic medium for data transfer and collation) the user's first response to the questionnaire ('using an electronic medium for data transfer and coalition"; Overview, Paragraph 3, Page 3);
3. repeating, at least one time, steps and subsequent responses; accepting and storing the user's to the questionnaire (question engine, adaptive questions; Abstract; Overview, Introduction; Pages 1-4);

4. comparing the user's first response to the user's subsequent responses (adaptive questions).

Pitkow et al. further teach that the online surveys of users included questions regarding consumer product purchases and that the results from the consumer commercialization survey are forthcoming (Consumer Surveys section, Pages 10-11).

Pitkow et al. does not expressly teach the utilization of surveys to determine the sustainability of a product (longevity, sustainability testing) or the subsequent presenting of one of more products as part of the sustainability testing as claimed.

Dyer et al. teaches a method for sustainability testing wherein sustainability testing is defined as determining a product's "ability to generate loyalty and hence repeat purchases among a segment of the consuming public" (Column 2, Lines 3-6; Column 5, Lines 53-68; Column 6, Lines 1-25). More specifically Dyer et al. teaches that the method for sustainability testing comprises:

- presenting (providing) one or more products to the user (member, test panel, evaluation packet, evaluation set, test set, market set; Abstract; Column 1, Lines 19-68; Column 3, Lines 33-42 and 48-60) for evaluation over a plurality of cycles (waves, time periods; Column 2, Lines 19-50; Column 5, Lines 53-68);
- asking the user to "respond to the test by sampling the product" (Column 2, Lines 51-63);

- utilizing a "written survey to establish a baseline of preference data" (Column 3, Lines 61-65);
- selecting products to be tested based on the written survey results (Column 15-19);
- enabling users to order products "at no charge" (Column 3, Lines 6-19; Column 4, Lines 51-68; Column 5, Lines 11-35; Column 6, Lines 9-1);
- accepting and storing the user's responses (orders, purchases; "record their snack food purchases"; Column 2, Lines 67-68; "a convenient method for recording this data" Column 5, Lines 37-52).

Further Dyer et al. teaches that there is a plurality of well-known and well-established means for evaluation products by consumers including but not limited to product surveys (Column 1, Lines 14-54).

It would have been obvious to one skilled in the art of at the time of the invention that the system and method for conducting online surveys as taught by Pitkow et al. would utilized the ability to conduct more in-depth consumer product surveys by applying the method of sustainability testing in view of the teachings of Dyer et al.; the resultant system enabling users to perform online sustainability testing thereby taking full advantage of the extended reach, ease of administration and development and reduced costs offered by online surveys (Pitkow et al.; Abstract, Page 1; Overview, Paragraph 3, Page 3).



Regarding Claims 3 and 4 Pitkow et al. teach a method for surveying online users consisting of a plurality of survey topics (question categories, classifications) including but not limited to survey questions relating to consumer products as discussed above. More specifically Pitkow et al. further teach that the method for surveying online users utilizes adaptive questions (Question Engine, see Overview section; Page 3) wherein answers provided to questions are used to determine the next set of questions and leads to a cycle of “question – answer – adapt/re-ask” (Abstract, Introduction, Overview; Page 4). Pitkow et al. further teach that the use of adaptive surveys “reduces the number and complexity of questions presented to each user” (Paragraph 1, Page 4).

While Pitkow et al. teach that the method for conducting online surveys can be utilized to conduct adaptive surveys on a vast array of topics Pitkow et al. does not expressly teach that the survey is adapted based upon the presentation of a first or second consumer product(s) as claimed.

It would have been obvious to one skilled in the art at the time of the invention that the method for the adaptive surveying of online users as taught by Pitkow et al., including its applicability to a plurality of survey topics including but not limited to product surveys, would utilize the ability to conduct more in-depth consumer product surveys by applying the method of sustainability testing in view of the teachings of Dyer et al.; the resultant system enabling users to perform online sustainability testing wherein the survey questions are dynamic (i.e. change/adapt based on the questions

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asked and answered by the survey taker) thereby reducing the number and complexity of questions presented to each user (Pitkow et al.; Paragraph 1, Page 4).

Regarding Claims 5 and 14 Pitkow et al. teach use of a distributed network (Web, Internet) for conducting user surveys (Title and Abstract section; Page 1).

Regarding Claim 11 while Pitkow et al. teach that the method for conducting online surveys can be utilized to conduct surveys on a vast array of topics Pitkow et al. does not expressly teach the use of online surveys for snack food items as claimed.

Dyer et al. teach a method for product sustainability testing as discussed above. More specifically Dyer et al. teach the sustainability testing of a plurality of products including but not limited to snack food products (Abstract; "In the context of snack food evaluation"; Column 2, Lines 19-39 and 66-68; Column 6, Lines 17-28).

It would have been obvious to one skilled in the art at the time of the invention that the method for surveying online users as taught by Pitkow et al., including its applicability to a plurality of survey topics including but not limited to product surveys, would utilize the ability to conduct more in-depth consumer product surveys by applying the method of sustainability testing of snack food products in view of the teachings of Dyer et al.; the resultant system enabling users to perform online sustainability testing of snack food products thereby taking full advantage of the extended reach, ease of

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administration and development and reduced costs offered by online surveys (Pitkow et al.; Abstract, Page 1; Overview, Paragraph 3, Page 3).

Further it would have been obvious to one skilled in the art at the time of the invention that the method for surveying online users as taught by Pitkow et al. would have benefited from surveying a plurality of products including but not limited to snack food products in view of the teachings of Dyer et al.

Regarding Claim 13 Pitkow et al. teach making the survey accessible through a CGI front-end (Architecture section; Page 5-6).

Regarding Claim 16 Pitkow et al. teach assigning an identifying code to the user (an ID/Session Tracker) within the Internet survey wherein the user responses are associated with the identification code thereby allowing for analysis between each questionnaire (Architecture section; Pages 5-6).

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16. Claim 2, 12, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pitkow et al., Using the Web as a Survey Tool, in view of Dyer et al. U.S. Patent No. 5,090, 734, as applied to claims 1, 3-5, 11, 13-14 and 16 above and further in view of official notice.

Regarding Claim 2 Pitkow et al. teach an adaptive online survey method as discussed above. Pitkow et al. teach the statistical analysis of the online user surveys (Architecture, Results, Consumer Surveys; Pages 1, 5-6, 8 and 10-11).

Pitkow et al. does not teach the utilization of surveys to determine the sustainability of a product (longevity, sustainability testing) or the method in which erroneous data (skewed, outlier) is accounted for during the analysis of as claimed.

Dyer et al. teaches a method for sustainability testing as discussed above.

It would have been obvious to one skilled in the art of at the time of the invention that the system and method for conducting online surveys as taught by Pitkow et al. would leverage the ability to conduct more in-depth consumer product surveys by applying the method of sustainability testing in view of the teachings of Dyer et al.; the resultant system enabling users to perform online sustainability testing thereby taking full advantage of the extended reach, ease of administration and development and

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reduced costs offered by online surveys (Pitkow et al.; Abstract, Page 1; Overview, Paragraph 3, Page 3).

Official notice is taken that correcting or the correction of skewed results (outliers) is well known in the art of statistical analysis as a means for insuring erroneous data does not adversely affect the statistical analysis' results.

It would have been obvious to one skilled in the art at the time of the invention that the method for surveying online users, including the steps of analyzing the survey results, as taught by Pitkow et al. would utilize a plurality of well known statistical techniques during the analysis of the survey data including but not limited to the proper treatment of data errors or anomalies which inevitably arise when performing statistical sampling (i.e. statistical techniques to prevent the distortion of the survey findings due to skewed data would have insured the results of the statistical analysis more accurately reflected the respondents responses).

Regarding Claim 12 Pitkow et al. teach a method for conducting surveys of online users as discussed above. Pitkow et al. further teach comparing the results of the online survey to the anticipated results (Paragraph 2, Page 11) as well as future surveys (re-conducting the survey every six months) as a means for "tracking the growth and changes in Web uses and population." (Conclusion, Page 11).

Pitkow et al. does not expressly teach the utilization of surveys, online or offline, to determine the sustainability of a product (longevity, sustainability testing) or the subsequent comparing of offline and online surveys as claimed.

Dyer et al. teaches a method for product sustainability testing as discussed above.

Official notice is taken that the comparison of multiple surveys, regardless of the method for conducting those surveys, is old and well known in the art as a means for determining such things as trends between various user communities. For example one would compare the "typical" online user (consumer) with the average consumer to shed light on such things as the penetration of online commercialization, online vs. offline purchasing behaviors/trends and the like.

It would have been obvious to one skilled in the art at the time of the invention that the method for surveying online users as taught by Pitkow et al. would have utilized the sustainability testing in view of the teachings of Dyer et al. Further it would have been obvious to one skilled in the art at the time of the invention that the online sustainability testing as taught by Pitkow et al. in view of Dyer et al. would have benefited from conducting and comparing both online and offline product sustainability tests as a means for tracking the growth and changes in different user populations.

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Regarding Claim 15 Pitkow et al. teach an adaptive online survey method as discussed above. Pitkow et al. further teach the utilization of a plurality of Internet technologies including but not limited to CGI, browsers, HTML, HTTP and the like (Architecture; Pages 5-6).

Pitkow et al. does not expressly teach the utilization of XML to transmit questionnaire responses as claimed.

Official notice is taken that the use of XML as a means of transmitting (exchanging) a wide variety of data on the Web and elsewhere is well known in the art at the time of the invention and provides a standard, simple and very flexible means for exchanging a plurality of data.

It would have been obvious to one in the art at the time of the invention that the method for surveying online users as taught by Pitkow et al., including its extensive use of well known Internet technologies, would utilize XML as a means of transmitting (exchanging) data over a distributed network; the resultant system having a standard and flexible means for transmitting and representing a plurality of survey data.

Regarding Claim 17 Pitkow et al. teach a method for surveying online users as discussed above. Pitkow et al. further teach the need and the method's ability to track users between questionnaires (Architecture, Page 5, Last Paragraph) and that the

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system utilizes hidden attributes in the HTML forms and an "ID/Session Tracker" to track/identify users (Page 6).

Pitkow et al. does not expressly teach the utilization of cookies to store user identifications (identifying code).

Official notice is taken that the use of cookies as a means for identifying users (an identifying code) is very old and very well known in the art at the time of the invention (i.e. the use of cookies as a means of uniquely identifying online users is well known in the art) as a means of overcoming the anonymous and stateless nature of the Internet (Pitkow et al.; Architecture Pages 5-6).

It would have been obvious to one in the art at the time of the invention to that the method for surveying online users, including its ability to uniquely identify, track and manage user sessions/identification, would have benefited from employing a plurality of means for identifying users including but not limited to the utilization of cookies as a means of identifying online users such identification means enabling the system to overcome the anonymous and stateless nature of the Internet (Pitkow et al.; Architecture Pages 5-6).



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17. Claims 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pitkow et al., Using the Web as a Survey Tool, in view of Dyer et al. U.S. Patent No. 5,090, 734, as applied to claims 1-5 and 11-17 above and further in view of Pinsley Pinsley et al., U.S. Patent No. 6,070,145.

Regarding Claim 6 Pitkow et al. teach a method for surveying online users as discussed above.

Pitkow et al. does not teach the utilization of surveys to determine the sustainability of a product (longevity, sustainability testing) or that first/second entities perform the sustainability testing as claimed.

Dyer et al. teaches a method for sustainability testing as discussed above.

It would have been obvious to one skilled in the art of at the time of the invention that the system and method for conducting online surveys as taught by Pitkow et al. would have benefited from the ability to conduct more in-depth consumer product surveys by applying the method of sustainability testing in view of the teachings of Dyer et al.; the resultant system enabling users to perform online sustainability testing thereby taking full advantage of the extended reach, ease of administration and development and reduced costs offered by online surveys (Pitkow et al.; Abstract, Page 1; Overview, Paragraph 3, Page 3).

Pinsley et al. teach a method and system for conducting multi-party online surveys (Abstract) and that such user surveys enhance the ability of vendors, advertisers and the like meet the users needs (i.e. insure the success and sustainability of their products; Column 1, Lines 58-68; Column 2, Lines 1-15; Figures 1 and 4).

More specifically Pinsley et al. teach a method and system for conducting a survey of online users via a computer network wherein the system and method involves two distinct entities the surveyor (surveyor's web site) and the advertiser (vendor, producer, advertiser's web site, etc.; Abstract; Column 3, Lines 5-8; Figure 3, Element 4).

It would have been obvious to one in the art at the time of the invention that the method for surveying online users as taught by Pitkow et al. would have benefited from the ability to conduct online users (consumer) surveys for any number of distinct entities (companies, advertisers, producers, retailer, etc.) in view of the teachings of Pinsley et al. thereby enabling online businesses to conduct a plurality of online surveys by utilizing a third-party survey vendor's system (i.e. enable each entity the ability specialize in their respective areas of expertise (surveys, product development, product retail, etc.).

Regarding Claim 7 Pitkow et al. in view of Dyer et al. teach a method and system for online sustainability testing as discussed above.

Pitkow et al. does not teach the participation of distinct entities or subsequently that the first participating entity is an online vendor and the second participating entity is a producer of the item.

Pinsley et al. teach a method and system for conducting a survey of online users wherein the system comprises the participation of two distinct entities for the survey: the surveyor (producer) and an advertiser (online vendor, retailer; Abstract; Column 1, Lines 58-68; Column 2, Lines 1-14; Figure 3, Element 4).

It would have been obvious to one in the art at the time of the invention to provide the online sustainability testing as discussed above (Pitkow et al. in view of Dyer et al.) with the ability to conduct a survey of online users utilizing any number or combination of distinct entities enabling each entity the ability specialize in their respective areas of expertise thereby capturing the in-depth expertise and economies of scale associated with such specialization of work. For example one could conduct online sustainability testing with three or more entities participating in the efforts including: a market research firm (surveyor) creating and analyzing the questionnaire, an online vendor/store who markets and sells the product(s) to be tested and the item producer (manufacturer) of the item (products) being tested; the resultant system enabling common business partners (advertisers, research firms, producers, retailers and the like) to collaboratively develop, market and sell products.

Regarding Claim 8 Pitkow et al. does not teach that the method for conducting surveys of online users includes the participation of two distinct entities or subsequently that those entities share information regarding the survey(s) conducted.

Pinsley et al. teach a system and method for conducting online surveys of consumers (users) wherein the producer shares the survey results with the online vendor ("information is collected, processed and analyzed by the surveyor", "the information may be delivered to the advertiser"; Column 3, Lines 5-8).

It would have been obvious to one skilled in the art at the time of the invention to share survey and other information between the distinct entities participating in the online sustainability testing, as discussed above and taught by Pitkow et al. in view Dyer et al., in order to facilitate the successful execution of the online sustainability testing and reinforce cooperative nature that exists between the participating entities in view of the teachings of Pinsely et al.

Regarding Claim 9 Pitkow et al. teach method for conducting online adaptive surveys over a plurality of survey topic areas as discussed above.

Pitkow et al. does not teach that the producer provides the items being surveyed free of charge as claimed.

Dyer et al. teach a method for conducting product sustainability testing wherein the method further enables users (consumers) to order products "at no charge" (Column 3, Lines 6-19; Column 4, Lines 51-68; Column 5, Lines 11-35; Column 6, Lines 9-1).

It would have been obvious to one skilled in the art of at the time of the invention that the system and method for conducting online surveys as taught by Pitkow et al. would utilized the ability to conduct more in-depth consumer product surveys by applying the method of sustainability testing in view of the teachings of Dyer et al.; the resultant system enabling users to perform online sustainability testing thereby taking full advantage of the extended reach, ease of administration and development and reduced costs offered by online surveys (Pitkow et al.; Abstract, Page 1; Overview, Paragraph 3, Page 3).

Further it would have been obvious to one skilled in the art at the time of the invention that the method for surveying online users as taught by Pitkow et al. would have benefited from the producer (or other participant) providing the items to be evaluated at no charge to the evaluators (consumers) as necessary condition for conducting sustainability testing. This is especially true when such products are not available for sale to the general public (i.e. are new and are being market tested against existing competitors) since the consumer cannot obtain such products without the producer providing them and that without the item the survey could not be practically conducted.

Regarding Claim 10 Pitkow et al. does not teach that the method for surveying online users involves a distinct entities or the providing of exclusive items (products) for evaluation as claimed.

Official notice is taken that the business practice of providing exclusive products (from producers to retailers/vendors online or offline) is well known in the art at the time of the invention. Further exclusive products (e.g. only available here) are a common industry practice wherein producers and vendors work cooperatively in offering these exclusive items as a means of enticing consumers to purchase those exclusive products. For example some branded items are only available (exclusively available) at particular vendors; one such relationship exists between PepsiCo and Pizza Hut wherein Pizza Hut exclusively offers and promotes PepsiCo products.

It would have been obvious to one skilled in the art at the time of the invention to incorporate exclusive items during sustainability testing, as taught by Pitkow et al. in view of Dyer et al., as a means of enticing online users to participate in the sustainability testing.

***Examiner Note***

Examiner has cited particular sections, Pages, and paragraphs or figures in the references applied to the claims for the convenience of the applicant. Although the specific citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in their entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

- Sack, U.S. Patent No. 5,124,911, teaches a method for product concept testing wherein a plurality of products are evaluated utilizing questionnaires.
- Kurland et al., U.S. Patent, 4,603,232, teach a method and system for conducting computer-based surveys of a plurality of users (panelist).
- Matyas, Jr., U.S. Patent No. 6,102,287, teach a method and system for conducting online product surveys wherein survey questions can be based on the products purchased by the consumer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott L. Jarrett whose telephone number is (703) 306-5679. The examiner can normally be reached on Monday-Friday, 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hafiz Tariq can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SJ  
3/28/2005



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